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**FRIEDLANDER, Judge**

Appellants, James and Rachel Willoughby (the Willoughbys), bring this interlocutory appeal from the trial court's order denying their motion to reconvene mediation and confirming a Settlement Agreement executed by the Willoughbys and Appellees, Donald Lockard and Dawnette Spencer a/k/a Dawnette Lockard (the Lockards), following mediation.

The Willoughbys present three issues for our review, which we consolidate and restate as: Did the trial court err in concluding that the Settlement Agreement was unambiguous?

The Lockards cross-appeal, arguing the trial court should have granted their request for attorney's fees.

We affirm and remand.

On or about May 24, 1999, the Lockards purchased certain real estate from Larry Eugene Burnett.<sup>1</sup> The real estate purchased by the Lockards is adjacent to 100 acres of real estate owned by the Willoughbys. Following the Lockards' purchase, a dispute arose between the Lockards and the Willoughbys as to the location of the shared property line that forms the western boundary of the Lockards' property and the eastern boundary of the Willoughbys' property. The property line dispute was fueled in part by the language in the deed describing the boundaries of the Lockards' property. Specifically, the deed described the northern and western boundary lines of the Lockards' property as follows:

said Northeast corner also being in the East line of said Southwest quarter; thence West parallel to the South line *a distance of 210 feet to the branch*; thence southerly *with the meanderings of the branch* to a point westerly (as measured parallel with the South line of said Southwest quarter) from the place of beginning . . . .

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<sup>1</sup> Burnett was not made a party to this action.

*Appellants' Appendix* at 106 (emphasis supplied). In fact, the distance from the northeast corner of the Lockards' property to the "branch"<sup>2</sup> is much shorter than that set forth in their deed description.<sup>3</sup> *Id.* The Lockards therefore believed the property line was located to the west of the branch and was marked by a fence that belonged to the Willoughbys. The Willoughbys believed the boundary line was east of their fence and followed the "meanderings of the branch". *Id.*

On January 30, 2003, the Willoughbys obtained a survey that indicated the boundary line ran along the branch. The Willoughbys discussed the results of their survey with the Lockards and then the Willoughbys moved their existing fence closer to the branch. The Lockards removed this fence and continued to use the property (the disputed property) to that point where they believed the boundary line to be, i.e., where the Willoughbys' fence was first located.

On March 15, 2007, the Lockards initiated this action in the Washington County Circuit Court. The Lockards sought a determination as to the location of the shared property line, and therefore, the ownership of the disputed property. The Willoughbys responded by filing an answer and a motion to dismiss the Lockards' complaint. The Willoughbys also filed a Counterclaim to Quiet Title & Establish Boundaries in Accordance with Legal Survey, Petition to Enjoin Trespass, and Complaint for Enforcement of Legal Survey.

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<sup>2</sup> From the record, it appears that the "branch" is a reference to a creek.

<sup>3</sup> According to a survey commissioned by the Willoughbys in 2003, the distance from the northeast corner of the Lockards' property to the branch is 134.27 feet. A surveyor's location report incorporated into the Settlement Agreement indicates that the distance between these same points is 120.04 feet.

Ultimately, the parties agreed to submit to mediation, which was held on May 23, 2007. The mediation resulted in a Settlement Agreement that was executed by all of the parties. The Settlement Agreement set forth in relevant part:

2. Lockard to own land in dispute, which is outlined in yellow on the attach[ed surveyors location report (the SLR)].

3. Lockard to pay cost of transfer of title, including cost of deed & survey description & survey, if necessary.

\* \* \*

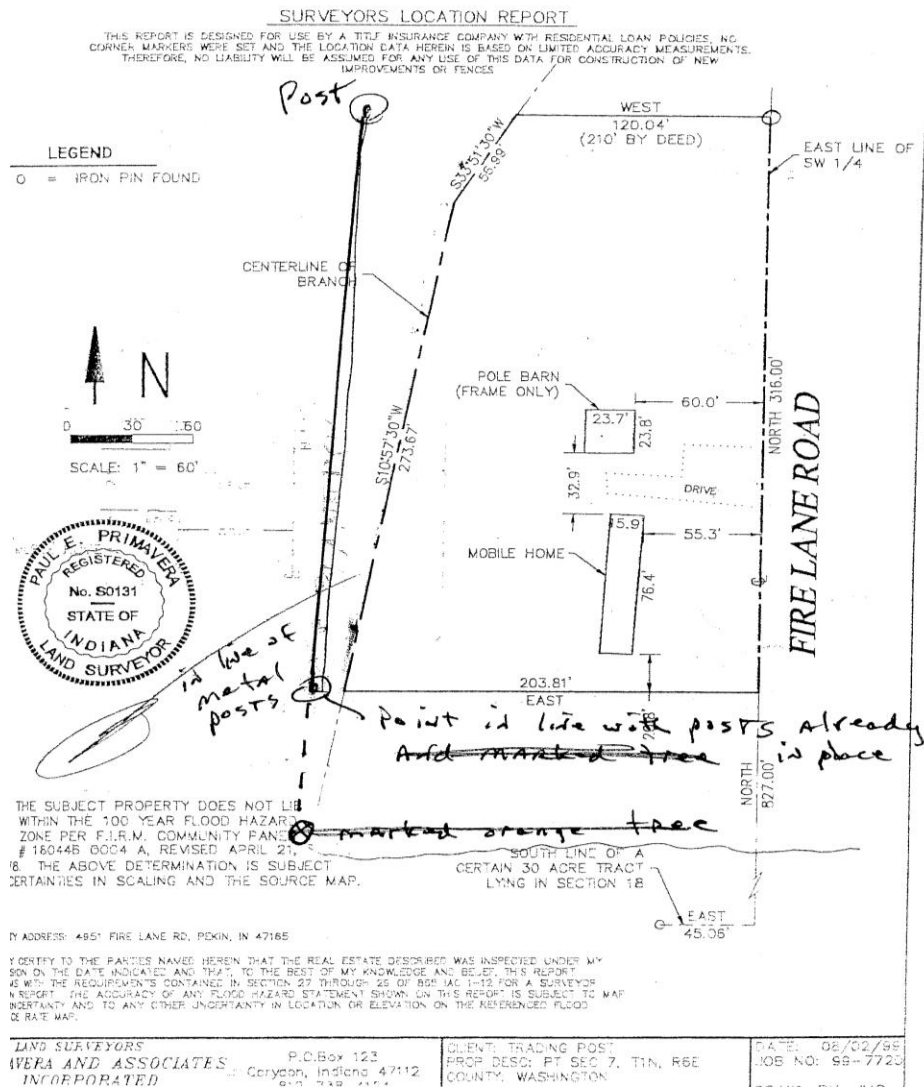
5. New west line of Lockard will start at post on north and be a straight line going south in line with a fence post that is directly west of the SW corner of Lockard.

6. Lockard to pay Willoughby \$1000.

\* \* \*

10. SW corner of Lockard to be a point where extension of Lockard south line westward intersects with line of metal posts running north & south on the Willoughby property.

*Id.* at 118-19. The SLR depicts what the parties agreed would be the shared property line and includes handwritten notations describing the reference points for the north and south points of the line to be established as the shared property line. *See Figure 1, below.*



The north point of the new property line is indicated on the SLR as a “Post” located west of the branch and in line with the Lockards’ northern property line. *Id.* at 120. The southern point of the new property line, and hence the southwest corner of the Lockards’ property, is indicated as a “point in line with posts already in place”. *Id.* There is a further handwritten notation that the point is “in line of metal posts”. *Id.*

Pursuant to the Settlement Agreement, the Lockards obtained a survey to establish the shared property line as set forth by the terms of the Settlement Agreement. This survey was conducted without the Willoughbys present and was based on representations made by Dawnette Lockard as to the northern and southern reference points to be used in establishing the shared property line. On this survey, the north point of the new property line was described by the surveyor as follows:

WOOD POST FND PAINTED – THE AGREED UPON POINT AS CALLED  
FOR IN THE SETTLEMENT AGREEMENT DATED 5/23/07 SHOWN TO  
ME BY DAWNETTE SPENCER

*Exhibits* at 7. This point is 99.06 feet west of the branch.<sup>4</sup> The southern point of the new property line is shown as a point farther south than the Lockards' southern property line. The southern reference point used by the surveyor was described as follows:

WOOD POST FND PAINTED – THE AGREED UPON POINT AS CALLED  
FOR IN THE SETTLEMENT AGREEMENT DATED 5/23/07 SHOWN TO  
ME BY DAWNETTE SPENCER. THE POST WAS USED TO ESTABLISH  
THE WEST LINE.

*Id.* A straight line connects the northern and southern reference points, and the southwest corner of the Lockards' property falls at the intersection of this line and the extension of their southern property line to the west. The area between the branch and this newly established shared property line is 0.528 acres.

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<sup>4</sup> Thus, according to this survey, the new northern property line of the Lockards' property extending to the reference point set forth in the Settlement Agreement is greater than the 210 feet set forth in their original deed. To be sure, the Lockards' northern property line is either 219.10 feet, i.e., 120.04 feet (distance from northeast corner of the Lockards' property to the branch according to the SLR) + 99.06 feet (distance from the branch to the now western property line), or 233.33 feet, i.e., 134.27 feet (distance from the northeast corner of the Lockards' property to the branch according to the Willoughbys' 2003 survey) + 99.06 feet (distance from the branch to the now western property line).

Upon completion of this survey, the Lockards tendered to the Willoughbys a quitclaim deed that includes a legal description based upon the survey and \$1,000 as required under the terms of the Settlement Agreement. The Willoughbys, however, refused to sign the quitclaim deed and did not accept the Lockards' tender.

On July 31, 2007, the Willoughbys filed a Motion to Set Aside Mediation Agreement and to Set Pre-trial Conference. In their motion, the Willoughbys claimed that they did not fully understand the process of mediation, citing the fact that they were under the influence of narcotics at the time; they suffered from declining blood sugar levels as they continued with five hours of mediation without taking a lunch break; and their elderly age. The Willoughbys further claimed that the mediation agreement was overly vague and therefore unconscionable.

The Lockards responded to the Willoughbys' motion three days later by filing a Motion to Enforce Mediation Settlement. The trial court held a hearing on the pending motions on October 1, 2007. At that hearing, the Willoughbys testified as to their confusion and lack of understanding during the mediation process. In response, the Lockards presented the testimony of Kerry Thompson, the mediator who conducted the mediation, in which Thompson testified as to his perception of the Willoughbys' competency during the mediation proceedings. Specifically, Thompson testified that he did not observe anything during the mediation process that led him to believe the Willoughbys were unable to understand or continue with the mediation.

On November 8, 2007, the trial court issued its order denying the Willoughbys' Motion to Set Aside Mediation and granting the Lockards' Motion to Enforce Mediation Settlement. The trial court ordered the Willoughbys to sign the quitclaim deed as presented to them. On December 4, 2007, the Willoughbys filed a Motion to Reconvene Mediation and to Stay Execution of Deed. The Lockards filed an objection thereto and included a request for attorney's fees. The trial court held a hearing on the Willoughbys' motion on February 25, 2008. At this hearing, the Willoughbys argued that the Settlement Agreement was ambiguous and therefore could not be enforced. On June 4, 2008, the trial court entered its order denying the Willoughbys' motion and confirming the Settlement Agreement. The trial court also ordered the Willoughbys to sign the deed. The trial court's order did not address the Lockards' request for attorney fees. The Willoughbys now appeal.<sup>5</sup>

The Willoughbys argue that the trial court erred in enforcing the Settlement Agreement. Essentially, the Willoughbys are challenging the trial court's interpretation and construction of the mediated Settlement Agreement. Settlement agreements are governed by the same general principles of contract law as any other agreement. *Ind. State Highway Comm'n v. Curtis*, 704 N.E.2d 1015 (Ind. 1998). The interpretation and construction of a contract is a function for the courts. *Stenger v. LLC Corp.*, 819 N.E.2d 480 (Ind. Ct. App. 2004), *trans. denied*. If the contract language is unambiguous and the intent of the parties is discernible from the written contract, the court is to give effect to the terms of the contract.

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<sup>5</sup> Although the trial court's order is not a final judgment, *see Georgos v. Jackson*, 790 N.E.2d 448 (Ind. 2003), the Willoughbys were authorized to file the instant interlocutory appeal as a matter of right under Ind.



*Id.* A contract is ambiguous if a reasonable person would find the contract subject to more than one interpretation; however, the terms of a contract are not ambiguous merely because the parties disagree as to their interpretation. *Id.* When the contract terms are clear and unambiguous, the terms are conclusive and we do not construe the contract or look to extrinsic evidence, but will merely apply the contractual provisions. *Id.*

The Willoughbys argue that the Settlement Agreement is ambiguous with regard to how it defines the northern and southern points of the shared property line. With regard to the northern point, the language in the Settlement Agreement is that the “New west line of Lockard will start at post on north . . . .” *Appellants’ Appendix* at 118. On the attached SLR, there is a point directly west of the northwest corner of the Lockards’ property that is identified by the handwritten word “Post”. *Id.* at 120. The Willoughbys argue that this is ambiguous in that there are no other descriptive notations such as approximate feet or other physical description to help identify the “Post” to be used as the starting point. *Id.* With no more of a description than “Post”, the Willoughbys assert that the Settlement Agreement was ambiguous. *Id.* Adding to the purported ambiguity, the Willoughbys claim that in the past there have been several fence lines constructed and removed in and around the property in dispute. The Willoughbys thus assert that there is the “probable existence of various lines of posts” that could have been used as reference points. *Appellants’ Brief* at 13. As a result of these alleged ambiguities, the Willoughbys claim a post located much further west than contemplated at mediation was used in the recent survey to establish the shared property line.

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Appellate Rule 14(A)(2) and (4) because the trial court compelled the Willoughbys to execute a deed within

Upon review of the Settlement Agreement, we find nothing ambiguous about the language used to describe the northern point of the shared property line. The attached SLR confirms that the parties intended for the “Post” to serve as the starting point. *Appellants’ Appendix* at 120. Further, the surveyor did not indicate that there were any problems in establishing the shared property lines according to the reference points set out in the Settlement Agreement. Finding no ambiguity, we will not consider extrinsic evidence.<sup>6</sup> The Settlement Agreement should be enforced according to its terms.

In their brief, the Willoughbys suggest that at mediation, they contemplated that the point to be used as the northern reference point would be 210 feet from the northeast corner of the Lockards’ property and thus, the Lockards’ northern property line would be in accordance with the language of their deed. In actuality, the survey conducted after the mediation used a post described as “WOOD POST FND PAINTED”, which was 99.06 feet west of branch, thus extending the property line to a distance greater than the 210 feet described in the Lockards’ original deed. *Exhibits* at 7. Other than making such assertion on appeal, there is nothing in the language of the Settlement Agreement that indicates that this is in fact what was contemplated. The Willoughbys nevertheless signed the Settlement Agreement, thereby assenting to the use of the “Post” as the northern reference point for the shared property line. *Appellants’ Appendix* at 120. The Willoughbys cannot now repudiate the Settlement Agreement claiming that they contemplated something different.

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ten days and ordered the delivery of the possession of real property to the Lockards.

<sup>6</sup> In any event, the Lockards presented no evidence to support their claim of the “probable existence” of other posts that could have been used as a reference point. *Appellants’ Brief* at 13.

The Willoughbys also argue that the description of the southern reference point was ambiguous and that the quitclaim deed the trial court ordered them to execute was inconsistent with what they contemplated would be the southern point of the shared boundary line. Specifically, the Settlement Agreement identified the southern point as “a fence post that is directly west of the SW corner of Lockard” and also as “a point where extension of Lockard south line westward intersects with line of metal posts running north & south on the Willoughby property.” *Id.* at 118-19. The attached SLR included the following handwritten notations regarding this point: “in line of metal posts” and “point in line with posts already in place.” *Id.* at 120.

The Willoughbys assert that the ambiguity in the description of the southwestern point became apparent when the surveyor conducted the survey for the purpose of implementing the Settlement Agreement. The survey the Lockards conducted pursuant to the Settlement Agreement relied upon a reference point much further south than the Lockards’ southern property line in establishing the shared property line. The Willoughbys maintain that this is inconsistent with the terms of the agreement.

The language used in the Settlement Agreement defined the point that was to be the southwest corner of the Lockards’ property. The 2007 survey shows that the southwest corner of the Lockards’ property was at that point “where extension of Lockard south line westward intersects with line of metal posts running north & south on the Willoughby property.” *Id.* at 119. This is not, as the Willoughbys claim, inconsistent with the terms of the Settlement Agreement.

The Willoughbys also take issue with the fact that the surveyor who conducted the 2007 survey resolved the alleged ambiguities as to the location of the northern and southern reference points by consulting with Dawnette Spencer, rather than with them. We have concluded, however, that the Settlement Agreement was not ambiguous with regard to the northern and southern reference points. That the surveyor spoke with Dawnette Spencer about the location of the reference points as defined by the Settlement Agreement is not cause to set aside the Settlement Agreement.

In summary, we conclude that the Settlement Agreement was not ambiguous and that the Willoughbys have failed to establish that the 2007 survey and the deed description are inconsistent with its terms. The trial court did not err in confirming the Settlement Agreement and ordering the Willoughbys to execute the quitclaim deed.

2.

In their objection to the Willoughbys' Motion to Reconvene Mediation, the Lockards requested attorney fees of \$1,000.00 based on the Willoughbys' failure to fulfill the terms of the Settlement Agreement. The trial court's order is silent as to their request. On appeal, the Lockards request that we remand to the trial court to consider an award of attorney fees, including fees for the appeal. *See Wagner v. Spurlock*, 803 N.E.2d 1174 (Ind. Ct. App. 2004).

Indiana adheres to the "American Rule" with respect to the payment of attorney's fees, which requires each party to pay his or her own attorney's fees absent an agreement between the parties, statutory authority, or rule to the contrary. *Fackler v. Powell*, 891 N.E.2d 1091

(Ind. Ct. App. 2008). We note that Indiana Alternative Dispute Resolution Rule 2.7(E)(3) provides that “[i]n the event of any breach or failure to perform under the agreement, upon motion, and after hearing, the court *may* impose sanctions, including entry of judgment on the agreement.” (Emphasis supplied). Clearly, this Rule gives the trial court discretion to award attorney’s fees if the circumstances so warrant.

Here, in its order denying the Willoughbys’ motion to reconvene and confirming the Settlement Agreement, the trial court did not indicate whether it considered the Lockards’ request for attorney’s fees. Under the circumstances of this case, the trial court would have acted well within its discretion in either granting or denying the request. Because it is unclear whether the trial court denied the request for attorney’s fees or simply overlooked the matter in ruling on the motion to reconvene mediation, we remand to the trial court to determine if an award of trial and/or appellate attorney’s fees is warranted under the circumstances of this case pursuant to A.D.R. 2.7(E)(3).

Judgment affirmed and remanded.

MAY, J., and BRADFORD, J., concur.